



700 Sunset Boulevard North • Sunset Beach, NC 28468

Telephone: 910-579-6297 • Fax: 910-579-1840

Website: [www.sunsetbeachnc.gov](http://www.sunsetbeachnc.gov) • Email: [sunsetbeach@atmc.net](mailto:sunsetbeach@atmc.net)

Susan Parker, Administrator

June 22, 2016

**DRAFT**

The Honorable Bill Rabon  
North Carolina Senate  
300 N. Salisbury Street, Room 311  
Raleigh, NC 27603-5925

RE: Opposition to House Bill 483, Land-Use Regulatory Change

Dear Senator Rabon:

The Town of Sunset Beach respectfully requests your support in opposition to House Bill 483 – An Act to Make Changes to the Land-Use Regulatory Laws of the State. The proposed law is exceptionally complex and changes some very important mechanisms local governments rely upon to enforce ordinances and protect property rights. The bill also introduces significant uncertainty in the development process by allowing appeals of local laws to move directly to Superior Court, bypassing local Boards of Adjustment and extending the timeframe for appealing certain permit decisions from 30 days to one year. Under the current system, the Board of Adjustment is the first remedy for persons aggrieved by a permit decision. The appeal period is 30 days after a permit is issued, after which the project moves forward with little risk of challenge. With the proposed language, a neighboring property owner may appeal the permit decision directly to the Superior Court within a year. In many instances, projects could be complete before an appeal is even filed. This proposal would create a chaotic situation at best for property owners working in good faith to complete projects under the current set of regulations.

In addition, the Board of Adjustment acts as a check and balance for municipal staff and boards, the governing body, and the municipal code of ordinances. With its own attorney operating separately from the town attorney, the Board of Adjustment can make decisions that may be in conflict with the municipality, providing an additional level of counterbalance.

It is concerning that several provisions of the bill would further complicate local ability to enforce ordinances invites legal challenges that are expensive for local governments to litigate at taxpayer's expense. Appeals that bypass local Boards of Adjustment would automatically cause local government to incur legal expenses in court that currently are handled by a quasi-judicial board. The proposed law would also eliminate the statute of limitations that would ordinarily limit facial challenges to the validity of ordinances. These legal actions allege that an ordinance is invalid, and if successful, they strike down the local ordinance. The provision thereby creates a permanent cause of action for developers, who could challenge longstanding local ordinances at any time. Under the proposal, the challenge would arise in the context of local government's enforcement action. If a local government sought to enforce a violation of its

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land use ordinance, a developer, as a defense to an enforcement action, could allege a facial challenge to the ordinance. This proposed language would put local ordinances constantly at risk for challenge, and no nearby property owner could rely on development decisions made by local governments.

The proposed law includes a provision eliminating estoppel as a defense for local governments. When permits are issued with a certain set of conditions, the developer is bound by those conditions and the local government can stop work if the conditions are not adhered. As we understand the proposed language, the developer could challenge certain conditions of the permit after the project is underway, and the project could continue until the challenge has been resolved. This proposal would encourage permit holders to accept permit conditions initially knowing that a challenge later could cause the terms of the permit to change. This provides little reassurance, particularly to adjacent property owners, that a project will be constructed as proposed.

Finally, the proposed language awards automatic attorney's fees in cases where local government has violated statute or case law and favors private parties who litigate against local governments. Again, we strongly object to laws that encourage increased litigation borne at the taxpayer's expense and weaken our authority to enforce local regulations.

The proposed language of this bill undermines local land-use regulations and enforcement mechanisms that work in concert to protect all of our property owners. The bill also unfairly penalizes local governments who work in good faith to maintain high quality development standards while at the same time reducing unnecessary legal expenses to enforce local ordinances. The Town would sincerely appreciate any support you can provide to defeat this proposed legislation.

Sincerely,

**TOWN OF SUNSET BEACH**

Ron Watts  
Mayor

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